IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2107 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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RAJENDRA JAIN BHAVAN UPASHRAY

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

MR BS PATEL for the Petitioner.

MRS RANJAN B PATEL for Petitioner No. 1

MR NK MAJMUDAR for Respondent No. 1-2.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 04/09/2001

ORAL JUDGEMENT

This petition has been filed for quashing the bills at Annexures "A" and "B" as also the impugned orders passed in Appeal Nos. 10/36 and 11/36 by the appellate committee at Annexures "C" and "D" to the petition.

2. Rule was issued to the respondent Gujarat Electricity Board. However, no affidavit has been filed

by the respondents. The petitioner is a charitable trust running a Dharmashala on no profit basis. It is stated that the Dharmashala of the petitioner trust has 150 rooms and has three electricity connections. Out of them, on checking two meters of the connection were found tampered with. The impugned additional bills were therefore, issued directing the petitioner to deposit amounts of Rs. 99,426.92 ps. and Rs. 48,801.26 ps. Being aggrieved by the said bills, the petitioner filed appeals before appellate authority. However, the appellate authority has dismissed those appeals and hence the petitioner has filed the present petition.

3. The contention of the learned counsel for the petitioner is that the respondent Corporation has not supplied power for 25 days and so the petitioner claims set off on account of staggerring, but that set off has not been considered at all by the appellate authority. The learned counsel for the petitioner also submitted that the entire load of 3 meters has been calculated on two meters and therefore, the appellate authority has not properly considered the facts and circumstances of the case on the basis of the actual power supply to the petitioner. It is also submitted that the Dharmashala has 150 rooms. Pilgrims had not used electricity during night and the petitioner trust has also submitted a list of pilgrims who used it. Thus, the respondent authorities were required to consider the actual use and consumption of the power not on the basis of surmises and conjectures.

4. I have carefully considered the contentions of the learned counsel for the petitioner and perused the relevant record. In the facts and circumstances, in my opinion, I think it proper that the matter requires to be considered afresh by the appellate authority. The contentions raised by the learned counsel for the petitioner have not been controverted or dealt with by way of filing any affidavit on behalf of the respondents. As such, the petition deserves to be allowed and accordingly, the petition is allowed. The impugned bills at annexures "A" and "B" issued by the respondent authorities and the orders dated 17.1.2001 in Appeal Nos. 10/36 and 11/36 passed by the appellate authority are hereby quashed and set aside. The matter is remanded to the appellate authority with a direction to reconsider the same and decide afresh after taking into consideration the contentions raised in the memo of appeals filed by the petitioner, in accordance with law within a period two two months, after giving a reasonable opportunity of hearing to the parties. It is pointed out

by the learned counsel for the petitioner that the petitioner has already deposited the entire disputed amount for reconnection. It is, therefore, directed that if the appellate authority comes to the conclusion that some less amount is required to be paid by the petitioner, then the amount already paid by the petitioner will be adjusted towards such bills and the remaining amount will be refunded to the petitioner. Rule is made absolute accordingly with no order as to costs. The interim relief granted earlier shall continue till the decision by the appellate authority.

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